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much as the contract provided that the abstract should be furnished without delay, it was entirely a matter of defense if the demand for the abstract was made sooner than contemplated. In the United States the furnishing of an abstract is not demandable as a legal right, as it is in England, but by agreement in most sales it is made a condition precedent on the part of the vendor. A failure to furnish upon the day named will put an end to the contract. *Howe v. Hutchinson*, 105 Ill. 501. The vendee is not obliged to extend the time, but may demand a return of his deposit on the price. *Williams v. Daly*, 33 Ill. App. 454. A vendor agreeing to furnish an abstract within a reasonable time, was held not necessarily bound to furnish one within 35 days, though such a time is fixed under the contract of sale for the first payment by the vendee. *Jackson v. Conlin*, 50 Ill. App. 538. There seem to be no cases in the reports in which the term "without delay" has appeared in this connection.

WILLS—PROBATE—FORMER GRANT OF ADMINISTRATION.—After due and regular proceedings, it was held that Wm. H. Mear died intestate and certain administrators were appointed; this administration had never been revoked. Three months later a will of testator's was found and admitted to probate, thus raising the issue as to whether a will may be admitted to probate, and letters testatmentary granted without first obtaining a judgment of annulment of the previous administration. *Held*, that the probate of the will was the proper proceeding, and the letters of administration, of the previous administration, are thereby revoked. *In re Mear's Estate* (1906), — S. C. —, 56 S. E. Rep. 7.

This is a case of first impression in South Carolina, and no line of cases can be found to prove whether annulment or probate is the proper proceeding. The case of *Wallace v. Walker*, 37 Ga. 265, is like the case at hand, except that it contains the additional element of fraud. In that case, letters of administration were obtained fraudulently, by representing that the owner of the property died intestate; later a will was found, and in deciding as to the procedure, the court held it was a case for the intervention of chancery. This case is applicable in Georgia and Michigan where chancery has jurisdiction, but not in the rest of the states where the system of courts gives jurisdiction to the probate court. By the Code of Procedure of La., Art. 43, according to *Ellis v. Davis* (1883), 109 U. S. 485, there is a special action in cases somewhat similar to the one here, which action is known as Revendication. This is perhaps the only state where a special, peculiar proceeding is provided for. It would seem for the following reasons, supported by text or cases, that the probate proceeding with notice to interested parties is the proper proceedings: (1) When a will is proved it should be admitted to probate. This is an accepted and well known doctrine, and the adoption of the annulment procedure here would destroy this maxim and would virtually mean that the probate of wills would have to be tried by annulment. (2) The probate proceeding, when notice is given to interested parties, is virtually an annulment proceeding, as was seen in *Stackhouse v. Berryhill*, 47 Minn. 201, where it was thought the owner of property died intestate, and a

will afterwards found was offered for probate. The court held that revocation proceedings were not necessary but that the two went "hand in hand," since the decree of revocation was made to depend entirely upon the success of the application to prove a will. This procedure, where notice is given, is followed in *Water v. Stickney*, 12 Allen (Mass.) 1, 4. There it was held that it is the duty of the probate court in a case such as the one at hand, to revoke letters of administration upon application of any party in interest, or even *ex mero motu*. See *Radford v. Gaskell*, 20 Mont. 293; *Watson v. Glover*, 77 Ala. 323. (3) Probate courts are authorized to review, set aside or annul their decrees if fraud or mistake is shown. Power to that effect are vested in Mississippi probate courts by an act of 1846, *Austin v. Lamar*, 23 Miss 189; also see *Crombie v. Engle*, 19 N. J. L. 82; *Campbell v. Thatcher*, 54 Barb. 382; *Johnson v. Johnson*, 26 Ohio St. 357; and *Lee v. Williams*, 85 Ala. 189, which under statute allows correction of an incorrect description of lands sold under probate decree. These decisions tend to show the power of probate courts, and by analogy they could settle such a case as here stated, which would be to correct a decree founded upon mistake, by allowing probate. The contrary view, held by *Schluter v. Bank*, 117 N. Y. 125; *Franklin v. Franklin*, 91 Tenn. 119; and *Smith v. Smith*, 168 Ill. 488, to the effect that there must be a revocation proceeding and not probate alone, seems based according to the New York judge's decision upon the protection of all persons acting in good faith upon the first letters of administration. It is hard to see how such people would be less protected in a probate proceeding where proper notice is given to interested parties. An objection advanced to the probate proceedings, is that it revokes letters testamentary by collateral attack, but according to *Stackhouse v. Berryhill*, 47 Minn. 201, the probate proceeding is justly looked upon as a direct attack.